

The September 10, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman Matthew Zuker called the meeting to order at 6:03 p.m. with the following members present:

Matthew Zuker, Chairman
James DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member (arrived at 7:03 pm)
Timothy Foley, Associate Member

Also present:

James Johnson, Interim Town Administrator
Ilana Quirk, Town Counsel
John Spillane, Chairman of Sewer & Water Commissioners (left at 6:59 p.m.)
Stephanie Mercandetti, Community & Economic Development Director

Mr. Zuker declared the board will be going into Executive Session to discuss litigation strategy known as Barberry Homes LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2014-01; and Town of Walpole, et al. v Barberry Homes, LLC, Land Court 2014 MISC 481399-AHS and Robertson v. Barberry Homes, LLC, Norfolk Superior Court NOCV2014-000129 involving a proposed 40B Comprehensive Permit for land on Moose Hill Road. A discussion of the foregoing in open session could compromise the purpose for the executive session. He further stated the board will return to open session at the conclusion of the executive session.

A motion was made by Mr. DeCelle, seconded by Mr. Hiltz, to go into executive session, under G.L. c.30A, §21 (a)(3), for the purposes and reasons declared by the Chairman and with the Zoning Board of Appeals to return to open session thereafter.

The vote was **5-0-0 in favor. (Mr. Zuker –Yes; Mr. DeCelle – Yes; Mr. Hiltz – Yes; Ms. Coffey – Yes; Mr. Foley – Yes)**

The Board returned to open session.

6:30 p.m. – (Tentative) Potential Deliberation on Barberry Homes, LLC – Case #21-13 (Zuker, DeCelle, Hiltz, Coffey, Foley)

Mr. Zuker explained that the Board wanted to discuss deliberations tonight but unfortunately we are not going to get to it this evening. There are still some more things the Board needs to review.

Ms. Angela Moore of 237 Moose Hill Road stated that a new piece of evidence came to light.

Mr. Zuker said that the Board could not take in any new information because the hearing is closed.

Town Counsel Quirk mentioned that she could take the new piece of evidence for purpose of settlement.

Mr. Zuker thanked Ms. Moore for all of her hard work and effort.

7:00 p.m. - Walsh Brothers Building Company – Case #11-14 (cont'd from 08/13/14)
(Zuker, DeCelle, Hiltz, Coffey, Murphy)

Mr. Zuker read the Public hearing notice for **WALSH BROTHERS BUILDING COMPANY, Case #11-14**, with respect to property involving undeveloped land off Eldor Drive (Lot 10), Walpole, MA and shown on the Assessors Map as Lot No. 56-119 86R Winter Street, Residence A Zone.

The application is for:

A Variance from Section 6-B.1 of the Zoning Bylaws which requires frontage of 150 feet along the street line with 87.33 feet being provided.

A Variance from Section 6-B.1 of the Zoning Bylaws which requires a circle, the diameter of which is not less than 80% (120 ft.) of the minimum required lot frontage, tangent to the exterior street line from which the required frontage and minimum setbacks are derived.

A Variance from Section 6-C.3.A of the Zoning Bylaws which requires a variance from lot frontage along the street line and also between said lot lines along a line which marks the required building setback. The longer of said distances shall be considered frontage however, the shorter of such measurements shall be not less than 80% percent of the required frontage. The proposed frontage along the street line is 87.33 feet and the shorter at the setback line is 46 feet.

Mr. Zuker stated that we are continuing this public hearing from August 13, 2014.

Mr. Richard Gallogly, the applicant's attorney, was present for the hearing and mentioned that at the last hearing the Board asked the applicant for some background information on the lot in question. He mentioned that he had a packet that he would like to submit into the record. He asked the Board to look at exhibit A which states that the ANR created the shape of that lot. It wasn't until 1993 that Mr. Lacivita obtained that piece of land. The pan handle was created in 1975. It was not created by the Lacivita's or the Walsh Brothers Building Company.

Mr. Hiltz noted that the deed that was before him was from 1977. He asked when the applicant retained the properties.

Mr. Gallogly stated that the Lacivita family still owns it. His client has not acquired it yet.

Mr. Zuker mentioned there were a couple of things he wanted to discuss. At the last hearing, an underground storage tank on the property was brought up by a resident. The Board forwarded the information to the Deputy Fire Chief, Michael Laracy. The Board did receive an email

response from Deputy Chief Laracy that stated, “It appears that at one point there was, or still is, an Underground Storage Tank located on this site. It will be up to the property owner/developer to take cautionary steps when excavating this site and if a UST is found they must secure all necessary permits for the removal of the tank.”

The applicant, John Walsh of Walsh Brothers Building Company, said that there seems to be some confusion regarding the Storage Tanks. At one time there might have been a tank. We have done some research and checked in on that tank and have not found anything. We are talking about two different parcels of land.

Mr. Zuker also mentioned that the Board received a letter from Ms. Joanne Piscetello.

Mr. Piscetello asked Mr. Zuker to read her letter into the record:

“Researching the intent and purpose to obtain a variance clearly indicates that a variance is not a right nor is one entitled to a variance. Issuing a special permit and variances in this case would be considered a transaction for commercial reasons only, which is contrary to the purposes and objectives of Walpole Zoning Bylaw for Residence A. The shape of parcel 56-119, Lot 10, is not peculiar to that property alone when compared to other lots in the same WINTER ST neighborhood including adjacent Parcel 56-124. There is no benefit for residents of ELDOR DR by allowing access to ELDOR DR for a WINTER ST parcel that is under consideration for purchase by the applicant as noted in his 6/24/2014 letter to ELDOR DR abutters.

THERE ARE CONCERNS/DISADVANTAGES/INCONVENIENCES FOR ALL ELDOR DRIVE RESIDENTS:

- Change of addresses to accommodate the 911 system since all lots on The “Plan entitled “Eldor Drive” Plan of Land in Walpole, Mass.” Dated April 30, 1964 as recorded in Norfolk Registry of Deeds, Plan Nos. 865, 866, and 867, of 1964 in Plan 217, have been developed. Lot 41B and Lot 41A are numbered 16 ELDOR DR and 18 ELDOR DR.
- Drainage concerns given the extensive list of special conditions of this wetlands property as outlined in an expired ten (10) page Wetlands Protection Act (WPA) Form 5 Order of Conditions as recorded in the Norfolk County of Deeds under the name Winter Estates Realty Trust. These special conditions are untenable!
- Further derogation of RA status for ELDOR DR for commercial reasons since the mandate of a commercial entity at Lot 41A ELDOR DR generating numerous commercial vehicle traffic on a daily basis to and from the residence. Potential decline in property values and difficulty selling properties due to the mandated commercial entity.
- Pumping station issues as expressed at the 08/13/2014 ZBA meeting. Walpole Water Department will have a record of damage to the homes at 27 ELDOR DR due to an overflow. Word on the street, “pumping is so frequent that the gates are often left open.”

Decisions of the Zoning Board of Appeals affect all property owners in Walpole not just those owners of land within three hundred (300) feet of the property line of the subject property ...Zoning Bylaws are intended to provide protection for property owners.

Joanne Piscitello 11 Eldor DR”

Mr. Zuker thanked Ms. Piscetello for her letter.

Mr. Gallogly mentioned that in respect to the numbering for 911 the applicant will do whatever it takes to make it trouble-free.

Mr. Rob Truax from GLM Engineering stated that the applicant asked him to look at the lot in question to see what could be done with the property if a variance was not granted. He submitted a sketch into the record. He said as it sits right now, it would allow us to put in a road. There is a possibility that the applicant could go for subdivision approval. I do not think this would be in the best interest of the town or the residents to do this. However, if the variance is not granted then this is something that could be done. It would be more costly but the applicant would only need to go before the Planning Board and the applicant meets all of the standards.

Mr. Zuker said that it was his understanding that one lot subdivisions are not allowed.

Mr. Truax stated that they have some extra area. They could create a second lot.

Mr. Walsh said that he is not saying he would go ahead with this plan. He just wants the Board to realize that it is a good piece of land. Someone else could do that if it was not him. He is coming before the Board and saying that they would like to put one house on that lot. It would fit in with the neighborhood and look nice. Otherwise this land goes back to the Lacivita family.

Mr. Hiltz wanted to know what the cost would be to create the two lot subdivision.

Mr. Truax said it would be \$125,000 for the roadway. The driveway would be \$45,000 because it is a complicated driveway with culverts.

Mr. Walsh mentioned that to the Lacivita family even if it is \$150,000 it is worth it.

Mr. Zuker asked if anyone from the public wished to speak.

Mr. Bill Hamilton of 45 Eldor Drive said that he knows Mr. Walsh would go to the Planning Board.

Mr. Zuker stated that we have an application before the Zoning Board right now. Please just speak on what we have in front of us.

Mr. Hamilton said that he just wanted to clarify that one point. If the Board issues these variances then you are creating a non-conforming lot.

Mr. Zuker stated that the lot is already non-conforming.

Ms. Murphy said that half of the town is made up of non-conforming lots.

Mr. Hamilton asked if the Board decides to issue this variance will it make the lot conforming.

Mr. Zuker said it will make it buildable.

Mr. Hamilton wanted to know what the hardship for the variance was.

Mr. Zuker said that it was an excellent question and they will ask the applicant.

Mr. Hamilton said that with this plan they have the right to go to the Planning Board and that the hardship was made by the Town. Will the applicant still have to prove that?

Mr. Zuker stated that the applicant has applied for a variance and they will have to prove hardship by lot, size, or topography. A lot of issues come into play. It is not that simple. Are there any more questions?

Mr. Hamilton stated that his concern is that the hardship he faces as an abutter is the possibility that his address would change.

Mr. Zuker wanted to know why Mr. Hamilton's address will change.

Mr. Hamilton stated that the town can no longer use a 10A, the 911 laws say that you cannot do that. The other factor is that I would hate to see the Board grant a variance on a home like this.

Both Mr. Zuker and Ms. Murphy explained that these are the kind of cases that come before the Board all of the time. They invited Mr. Hamilton to come to the Board's other meetings.

Mr. Hamilton said that the town has a finite supply of water.

Mr. Zuker said that the Board considers this and this is why a variance threshold is held to the highest standard.

Ms. Barbara Coates of 82 Winter Street stated that her property abuts this land. She feels that there is no hardship. She also would like to address the comment on the buried oil tanks. The town claims they are not there. They were never allowed and they were never taken out. I have a statement from the government that says so. Ms. Coates provided the Board with new information for the record. She said in this town it is who you know. I have been here for 63 years. I am concerned about the residents who buy these houses. They are not given a fair deal. They should be able to trust the people in the town to do the right thing.

Mr. Zuker thanked Ms. Coates for her comments.

Mr. Joe Glennon of 14 Eldor drive stated that he would be directly impacted if they have to change the address. He also felt that the house would be the white elephant on the street. Who would want to buy that house?

Mr. Walsh stated when the variance was originally granted the town felt that putting a street in was unwise. He explained that he did write a letter to the people in the neighborhood to inform them that it was his intention to just put in one house.

Mr. Hamilton mentioned that he was not notified.

Mr. Hiltz asked if there was anyone here tonight who lives within 300 feet of the property that was not notified. No members of the public within 300 feet of the subject property raised their hands.

Mr. Frank Piscetello of 11 Eldor Drive stated that he was not notified.

Stephanie Mercandetti mentioned that when the hearing was first advertised, the Piscetellos did come to the office to inquire about notification and that there was a technical issue. They are located outside of the 300ft requirement for abutter notification. They also had a concern regarding the property as advertised. Upon concurrence with the Chairman, Town Counsel and the applicant, it was readvertised and the hearing opened in August instead of July.

Mr. Hamilton mentioned that he is NOT within 300 feet of the property however he feels he should have been notified because if the street numbers change due to this property then that would affect him and the rest of the street.

Mr. Zuker said that he would be shocked if the whole street changed its house numbers. However, the Board is not here tonight for that.

Mr. Hiltz stated that the requirement for this Board is to hear the case. If the abutters were informed, which was done, then they are welcome to come to the meeting, as well as any other interested resident and express their concerns. The Board has heard those concerns and is trying to respond to those issues. Any private citizen can file a suit in land court if they would like to pursue it legally. All of the residents who needed to be notified have been notified.

Mr. Zuker said that the Board is here tonight for a variance. We are trying to figure that out. We are trying to gather information to get to that determination.

Ms. Coates mentioned that she requested a map from the Conservation Commission. She stated that the map shows that this land could be easily developed and that they could access this land through the subdivision. The map shows the road going through.

Mr. Zuker said that there are wetlands and there are rules on what you can do and what you cannot do.

Mr. Truax stated that the applicant could not access the house from any other point because of the wetlands.

Ms. Coates said if the town paid attention to the wetlands the street of Eldor Drive would never been built.

A resident asked if this new house being proposed would have a septic tank or be on the town sewerage. He also wanted to know if the applicant would have to appear before another board.

Mr. Walsh stated that it would be sewerage.

Mr. Zuker said if the Board granted to the variance then the applicant would have to go before the Conservation Commission.

Mr. DeCelle asked why the frontage for this lot was not brought in from the back.

Mr. Walsh said because of the wetlands.

Mr. Truax explained that they went through the Planning Board and they told us to get a variance from the Zoning Board. We received the variance but unfortunately the time expired and that is how we got here today.

Mr. Hiltz said even if the variance was granted before, why was that not a self-inflicted hardship.

Mr. Truax explained that they have always had the issue of the wetlands. They would not get access from the state.

Mr. Hiltz stated that the access would have to be across the frontage.

Mr. Truax said this is a viable alternative. The DEP would not allow you to fill in the wetlands. That does create the hardship with the topography.

Mr. Zuker stated that the Board will take the access issue into consideration.

The Board asked the applicant for an extension to which the applicant agreed.

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to accept the extension of the deadline for the Zoning Board of Appeals to make its decision in this matter to September 30, 2014 and file its decision with the Town Clerk's Office.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey, Murphy voting)

A motion was made by Mr. DeCelle, seconded by Ms. Murphy to close the hearing with deliberation to take place on September 24, 2014.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey, Murphy voting)

7:00 p.m. – James L. Diamond Jr. – Case #12-14 (con't from 08/13/14) (Zuker, DeCelle, Hiltz, Coffey, Murphy)

Mr. Zuker read the public hearing notice for **JAMES L. DIAMOND JR., Case #12-14**, with respect to property located at 759 Cedar Street, Walpole, MA and shown on the Assessors Map as Lot No. 39-19, Residence A Zone.

The application is for:

A Special Permit under Section 9 of the Zoning Bylaws to allow for new construction onto an existing non-conforming structure that is within setback and elevation guidelines set forth by town bylaws regarding non-conforming structures in Residence A Zoning District, as specified in Section 9.

The applicant, James L. Diamond Jr., was present and stated that he had spoken with the Town Engineer Margaret Walker. He explained that his current footprint as it stands now does not include impervious space. Water can flow underneath. If we were to change the foundation the footprint could be permeable. The Building Inspector is not in and his assistant could not come to a decision. The Town Engineer said that she would need a decision from the Building Inspector about what his opinion would be. He stated that he read over section 12 of the Bylaw which was confusing. He noted that his issue is there are no definitions of pervious vs. impervious.

Mr. Hiltz mentioned that the question to the Building Inspector is whether this pervious or impervious space is a buildable solution. I would suggest that you meet with the Building Inspector and come up with an answer for if it is buildable or not. You or your engineer could submit your opinion of why it is pervious. We would then send that memo to the Town Engineer and ask her opinion. If you meet with the Building Inspector and ask him about your new plans he should be able to direct you in which way you would need to go, if you would need a variance or a special permit.

Mr. Diamond stated that if the Building Inspector said he would need a variance then he would need to resubmit and go through this whole process all over again.

Ms. Murphy asked the applicant how much time he would need to change his plans.

Mr. Diamond stated that he would need to scrap his current plans and completely change them. The applicant would be changing the current footprint.

Mr. Zuker said that he would like to commend the applicant on all of the hard work he has done. He has done everything the Board has asked him to. The Bylaw can be tricky. He asked the applicant if his goal was to come up with plans that did not violate the height requirement.

Mr. Diamond stated yes.

Mr. DeCelle mentioned that the Board could waive the fees if the applicant needed to refile.

Mr. Zuker went on record as saying that he did not have a problem with the Board waiving the fee for a new application and plans.

Mr. Diamond said that he would like to do a complete second floor. He is talking with engineers to make sure it would work and that the house could support that. He spoke with his neighbors and they do not have a problem with what he is proposing.

Mr. Zuker said that the applicant is in good shape. He noted that it would seem that the applicant would have the Board's support if he decided to go with a Special Permit.

Mr. DeCelle asked that whoever does the survey could they please put the numbers on the plan.

Mr. Diamond said yes and that he learned his lesson from the last time.

Mr. Hiltz asked the applicant how much time he would need.

Mr. Diamond said that the November meeting would work.

Mr. Hiltz said if things came together and he wanted to come back sooner than the Board could put the applicant on the agenda for an earlier date.

Ms. Murphy said if the applicant wanted to wait until November then the meeting date would be November 12, 2014.

The Board asked the applicant for an extension to which the applicant agreed.

A motion was made by Ms. Murphy, seconded by Ms. Coffey to accept the extension of the deadline for the Zoning Board of Appeals to make its decision in this matter to December 30, 2014 and as additional 14 days beyond that date to file the decision with the Town Clerk's Office.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey, Murphy voting)

A motion was made by Ms. Murphy, seconded by Ms. Coffey to continue the meeting to November 12, 2014 at 7:00 p.m.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey, Murphy voting)

A motion was made by Mr. Zuker, seconded by Mr. DeCelle to adjourn the meeting at 9:06 p.m.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey, Murphy voting)

Craig W. Hiltz
Clerk

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Minutes were approved on October 29, 2014

